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5 **UNITED STATES DISTRICT COURT**  
6 **NORTHERN DISTRICT OF CALIFORNIA**  
7 **SAN JOSE DIVISION**  
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9 KUANG-BAO P. OU-YOUNG,

10 Plaintiff,

11 v.

12 LAWRENCE E. STONE, Santa Clara  
13 County Assessor; JEANETTE TONINI,  
14 Senior Assessment Clerk; and COUNTY OF  
15 SANTA CLARA,

16 Defendants.  
17

Case No. 19-cv-07000-BLF

**ORDER DENYING PLAINTIFF'S  
MOTION TO REMAND**

[Re: ECF 16]

18 Plaintiff Kuang-Bao P. Ou-Young filed this action in the Santa Clara County Superior  
19 Court on October 17, 2019, asserting claims against Defendants Lawrence E. Stone, Santa Clara  
20 County Assessor ("Stone"); Jeanette Tonini, Senior Assessment Clerk ("Tonini"); the County of  
21 Santa Clara ("the County"); and District Judge Edward J. Davila ("Judge Davila"). *See* Notice of  
22 Removal Exh. 4 (Complaint), ECF 1-4. United States removed the action to federal district court  
23 on behalf of Judge Davila. *See* Notice of Removal, ECF 1. Plaintiff moves to remand the action  
24 to the state court.

25 Plaintiff's motion is without merit. The United States removed the action pursuant to 28  
26 U.S.C. § 1442(a)(3), which provides for removal of state court actions asserted against "[a]ny  
27 officer of the courts of the United States, for or relating to any act under color of office or in the  
28 performance of his duties." *See* Notice of Removal, Case No. 19-cv-07000-BLF, ECF 1.

1 Plaintiff's claims against Judge Davila arise from Judge Davila's performance of his judicial  
2 duties with respect to a case assigned to him. *See* Notice of Removal Exh. 4 (Complaint) at 2-3,  
3 ECF 1-4. Thus, removal was proper.

4 Plaintiff argues that the United States should not have removed the action because it  
5 should have known that the complaint failed to state a claim against Judge Davila. Plaintiff cites  
6 no authority in support of that argument.

7 Moreover, as the County and Stone point out, Plaintiff alleges a federal constitutional  
8 claim. "The district courts shall have original jurisdiction of all civil actions arising under the  
9 Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Plaintiff alleges a claim  
10 for "Unreasonable Seizures" in violation of the Fourth Amendment to the United States  
11 Constitution. *See* Notice of Removal Exh. 4 (Complaint) at 2-3, ECF 1-4. Because it has original  
12 jurisdiction over Plaintiff's claims, the Court retains jurisdiction after dismissing Judge Davila.

13 The motion to remand is DENIED.<sup>1</sup>

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15 Dated: December 5, 2019



BETH LABSON FREEMAN  
United States District Judge

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27 <sup>1</sup> The County and Stone ask the Court to dismiss the present action as duplicative of another action  
28 pending before the undersigned, *Ou-Young v. Lawrence Stone, et al.*, Case No. 19-cv-07231-BLF. An opposition brief is not an appropriate procedural vehicle to seek dismissal of an action, and thus the request for dismissal has not been considered.